IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

TUESDAY, THE 16TH OCTOBER 2007 / 24TH ASWINA 1929

WP(C).No. 29907 of 2007(I)

PETITIONER:

MATHEW K.CHERIAN, MANAGING DIRECTOR,
M/S.KOSAMATTOM FINANCE (P) LTD.,
BRINDABAN COMPLEX, KOTTAYAM - 686 001.

BY ADV. SRI.R.RAMADAS

RESPONDENTS:

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1. KERALA STATE ELECTRICITY BOARD,
REPRESENTED BY ITS SECRETARY,
VYDHYUTHI BHAVAN, THIRUVANANTHAPURAM.

2. THE ASSISTANT ENGINEER,
ELECTRICAL SECTION NO.1,
THODUPUZHA.

BY STANDING COUNSEL SRI.P.P.THAJUDEEN.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 16/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

THOTTATHIL B.RADHAKRISHNAN, J.

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W.P.(C) No. 29907 of 2007

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Dated this the 16th day of October, 2007

JUDGMENT

Heard counsel for the petitioner and learned standing counsel for the Electricity Board.

2. The impugned Electricity bills are challenged by the petitioner, who admittedly, is a non-banking institution, whose, activities are within LT VI C Tariff in terms of Tariff revision order 2002. However, he was supplied energy under LT VII (A) Tariff for commercial purpose. The nature and the use of the premises is not much in dispute. But it cannot also be presumed that the Board officials provided electric connection after inspecting the premises. This means that the nature and the use is also a matter on which the Board officials would be either aware or would have ignored in spite of duties and responsibilities which require them to have knowledge of the purpose, for which energy is being supplied. Such information is necessary because no act of any officer of the Board in placing a consumer under a wrong tariff would bring in any advantage to him at the costs of the public exchequer.

3. In terms of Section 126(5) of the Electricity Act, 2003 a presumption is provided regarding the user and following such presumption, an obligatory presumption follows under sub Section 6 of Section 125. The presumption in clause 9 of regulation 50 of the K.S.E.Board Demands and Conditions of supply 2005 provides that if the consumer uses energy supplied for a specific purpose under a particular tariff use of it for a different purpose is not contemplated in that tariff of supplies and for which, higher tariff is applicable. When energy is consumed unauthorisedly, use of such energy falls well within the scope of clause(b)(IV) among the explanations to Section 126 of the Electricity Act, which provides that unauthorised use of electricity means the usage of electricity for the purpose other than for which the use of electricity so authorised.

4. Having the aforesaid background, the petitioner can aspire for revision of any portion of the penalty and penal charges, if permissible in law, while the question of placing the petitioner under LT (VI)(C) Tariff is beyond challenge. In the aforesaid circumstances, this writ petition is disposed of directing that if the petitioner remits the amount under the impugned demands within a period of two weeks from now and files appeal before the competent authority under Section 127 of K.S.E. Act 2003, that would be considered and an appropriate decision taken in accordance with

law, however, that placement of the petitioner-consumer in LT(VI)(C) Tariff is sustained. If the appellate authority decides in favour of the petitioner, any amount that may be available to him following such decision, would be adjusted against the immediate succeeding bills.

THOTTATHIL B.RADHAKRISHNAN,
JUDGE

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